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The Cloture Rule

*March 10, 1981**

Mr. President, one of the greatest changes occurring in the Senate rules between the 1884 codification and the 1979 revision was the emergence and development of the controversial cloture rule. That rule is now contained in paragraph 2 of Rule XXII, and it commands a history unto itself. The origin, development, and evolution of the rule have constituted a long and stormy voyage on the Senate's parliamentary sea.

The practice of limiting debate dates to 1604 when Sir Henry Vane first introduced the idea in the British Parliament. Known in parliamentary procedure as the "previous question," it is described in Section XXXIV of Jefferson's *Manual of Parliamentary Practice* as follows:

> When any question is before the House, any Member may move a previous question, "Whether that question (called the main question) shall now be put?" If it pass in the affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter.[1]

The *Journals of the Continental Congress* record that the previous question was used in 1778. Section 10 of the rules of the Continental Congress read, "While a question is before the House, no motion shall be received, unless for an amendment, for the previous question, to postpone the consideration of the main question, or to commit it." [2]

Both the British Parliament and the Continental Congress used the previous question as a means of preventing discussion of a delicate subject. The Congress of the Confederation, on the practice of which the 1789 Senate drew heavily, specifically declared that the

> previous question . . . shall only be admitted when, in the judgment of two States at least, the subject moved is in its nature, or from the circumstances of time or place improper to be debated or decided, and shall therefore preclude all amendments and farther debates on the subject, until it is decided.[3]

Jefferson, in his *Manual*, written while the 1789 rule was still in effect, stated:

> The proper occasion for the Previous Question is when a subject is brought forward of a delicate nature as to high personages . . . or the discussion of which may call forth observations which might be of injurious consequences. Then the Previous Question is proposed; and in the modern usage, the discussion of the Main (pending) Question is suspended, and the debate confined to the Previous Question. The use of it has been extended abusively to other cases.[4]

The question of whether, in the last analysis, a minority should have the power to prevent legislative action by the majority had been discussed in America long before 1789. Even in the colonial assemblies, various forms of obstruction had been practiced, and the subject was mentioned in the Constitutional Convention.

Roy Swanstrom, in his in-depth study of the Senate's formative years, titled *The United States Senate, 1787–1801*, stated that a committee of the Congress of the Confederation, in 1784, "recommended stringent rules to prevent delays." The adjournment date having been set for June 3, and with much work to be done in the remaining two weeks, the committee recommended that

> *in this instance* the President be authorized to take the following action to speed up business:
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> To take the sense of Congress with respect to putting any question without debate when he considered it desirable;

* Revised December 1989

To prevent any Member from speaking more than once or longer than the President deemed necessary;

To prevent more than two Members from speaking on one side of any question, and

To finish each day's business regardless of the hour of adjournment.[5]

The *Journals of the Continental Congress* "do not record that the recommendations were adopted," wrote Swanstrom, but they constituted proposals "far more stringent than the Senate was ever to consider." [6]

It is apparent that the Senate in the First Congress disapproved of unlimited debate, since Rule IV provided that "no member shall speak more than twice in any one debate on the same day, without leave of the Senate," and Rule VI provided that "no motion shall be debated until the same shall be seconded." Some senators, however, did resort to delaying tactics in 1789 against legislation providing that the national capital be located on the Susquehanna River.[7]

The next year, the bill to establish the permanent home of the capital again encountered dilatory tactics in both houses. According to Swanstrom, senators who opposed selecting Philadelphia as the capital "tried to spin out the time until the Rhode Island senators could arrive and vote against that site." In the House of Representatives, supporters of Philadelphia were contending with the weather. It was raining when the Philadelphia bill was under consideration in the House. "If the bill passed the House and was sent to the Senate before the rain stopped, its friends believed it would undoubtedly pass; if it reached the Senate after the rain stopped, it would be defeated." This unusual situation was due to the illness of Senator Samuel Johnston, an opponent of the Philadelphia location, who "could not safely be carried to the floor in the rain to vote against the bill, but could and would if the rain had ceased." Swanstrom explained that "the Senate was so evenly divided that the ill Senator's vote could have meant the difference. . . . Supporters of the bill, therefore, tried to push the bill through the House while the rain continued." [8] According to Fisher Ames, a member of the House, Elbridge Gerry of Massachusetts and William Smith of South Carolina thwarted the effort by "making long speeches and motions" which prevented a decision until the next day.[9]

The rules adopted by the United States Senate in April 1789 included a motion "for the previous question." According to historian George H. Haynes, when Vice President Aaron Burr delivered his farewell address to the Senate in March 1805, he "recommended the discarding of the previous question," because, in the preceding four years during which he had presided over the Senate, it had "been taken but once, and then upon an amendment." When the rules were codified in 1806, reference to the previous question was omitted, since it had been used only ten times during the years from 1789 to 1806, and it has never been restored.[10]

In 1807, the Senate forbade debate on an amendment at the third reading of a bill—the last action it took to limit debate until 1846. Henry Clay, in 1841, proposed the introduction of the "previous question" but abandoned the idea in the face of opposition. When the Oregon bill was being considered in 1846, a unanimous consent agreement was used as a way to limit debate by setting a date for a vote. Such agreements are now often used to set the time for a Senate vote on a measure, without further debate, as well as to limit debate on amendments, appeals, debatable motions, and points of order if submitted to the Senate.

When Senator Stephen Douglas proposed permitting the use of the "previous question" in 1850, the idea encountered substantial opposition and was dropped.[11]

During the third session of the Forty-first Congress, in December 1870, Senator Henry

Anthony of Rhode Island introduced, and the Senate approved, the following resolution aimed at expediting business:

> On Monday next, at one o'clock, the Senate will proceed to the consideration of the Calendar, and bills that are not objected to shall be taken up in their order; and each Senator shall be entitled to speak once, and for 5 minutes only, on each question; and this order shall be enforced daily at one o'clock 'till the end of the Calendar is reached.

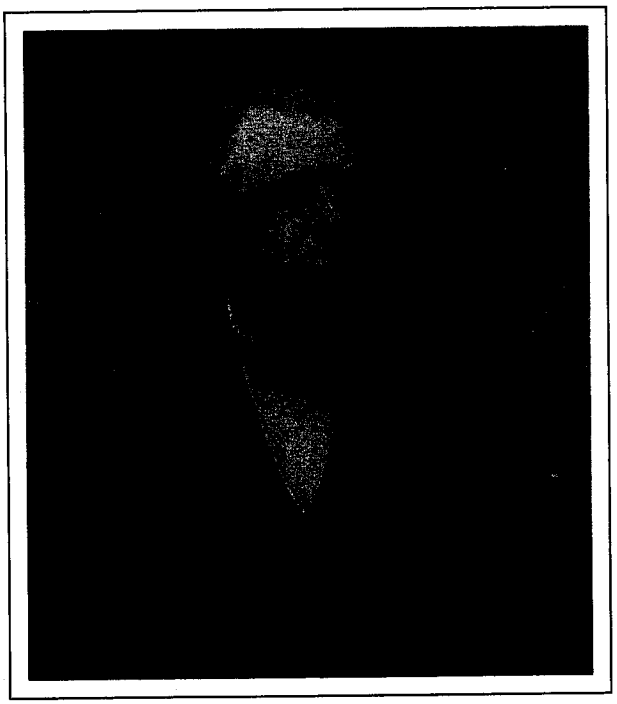
Before adopting the so-called Anthony Rule, an important step in limiting debate, the Senate agreed to an amendment by Senator John Sherman of Ohio, adding at the end, "unless upon motion the Senate should at any time otherwise order." [12]

An effort to reinstitute the "previous question," on March 19, 1873, failed by a vote of 25 to 30.

On February 5, 1880, the Anthony Rule became Rule VIII of the standing rules of the Senate. In 1882, the Senate amended the rule, so that, if the majority decided to take up a bill on the calendar after objection was made, the measure would be subject to the ordinary rules of debate without limitation.

When Rules Committee Chairman William Frye of Maine reported a general revision of the Senate rules in 1883, the package included a provision for the "previous question," but it was eliminated by amendments in the Senate.[13]

On March 17, 1884, the Senate agreed to the following amendment to the rules: "The Presiding Officer may at any time lay, and it shall be in order at any time for a Senator to move to lay, before the Senate any bill or other matter sent to the Senate by the President or the House of Representatives, and any question pending at that time shall be suspended for this purpose. Any motion so made shall be determined without debate." [14]



Senator Henry Anthony introduced a rule in 1870 to limit debate. *U.S. Senate Historical Office*

Between 1884 and 1890, fifteen different resolutions were offered to amend the rules regarding limitations of debate, all of which failed of adoption. In December 1890, when the Senate was filibustering Massachusetts Representative Henry Cabot Lodge's so-called Force bill, dealing with federal elections, Senator Nelson Aldrich of Rhode Island introduced a cloture resolution that stated:

> When any bill, resolution, or other question shall have been under consideration for a considerable time it shall be in order for any Senator to demand that debate thereon be closed. On such demand no debate shall be in order, and pending such demand no other motion except one motion to adjourn shall be made. If such demand be seconded by a majority of the Senators present, the question shall forthwith be taken thereon without debate.[15]

According to a history of the cloture rule published by the Senate Rules Committee, five test votes were taken on Senator Al-

drich's cloture proposal, and the votes "commanded various majorities, but in the end it could not be carried in the Senate because of a filibuster against it which merged into a filibuster on the 'force bill.'" [16]

In 1893, Henry Cabot Lodge, who had moved to the Senate that year, expressed his growing frustration over the delay, by excessive debate, on legislation he considered vital. In an article entitled "The Struggle in the Senate," Lodge wrote:

> Of the two rights (of debating and voting) that of voting is the higher and more important. We ought to have both, and debate certainly in ample measure; but, if we are forced to choose between them, the right of action must prevail over the right of discussion. To vote without debating is perilous, but to debate and never vote is imbecile. . . .
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> . . . As it is, there must be a change, for the delays which now take place are discrediting the Senate, and this is something greatly to be deplored. The Senate was perhaps the greatest single achievement of the makers of the Constitution. It is one of the strongest bulwarks of our system of government, and anything which lowers it in the eyes of the people is a most serious matter. How the Senate may vote on any given question at any given time is of secondary importance, but when it is seen that it is unable to take any action at all the situation becomes of the gravest character. A body which cannot govern itself will not long hold the respect of the people who have chosen it to govern the country. . . .
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> . . . No minority is ever to blame for obstruction. If the rules permit them to obstruct, they are lawfully entitled to use those rules in order to stop a measure which they deem injurious. The blame for obstruction rests with the *majority*, and if there is obstruction, it is because the majority permit it. The majority to which I here refer is the party majority in control of the chamber.[17]

Lodge would later change his mind. In 1903, he commented on the Senate's rules allowing full and free debate, declaring that he had "much rather take the chances of occasional obstruction than to put the Senate in the position where bills could be driven through under rules which may be absolutely necessary in a large body like the House of Representatives . . . but which are not necessary here." It was Lodge's opinion that "here we should have, minority and majority alike, the fullest possible opportunity of debate." [18]

In 1897, the chair ruled that successive quorum calls could not be ordered unless some business had intervened, opening the way to a discussion of exactly what constituted "intervening business." This issue was finally joined in 1908 during a marathon filibuster led by Robert La Follette, Sr. On that occasion, Senator La Follette broke the previous endurance record by holding the floor for eighteen hours and twenty-three minutes. His accomplishment was made possible through the device of suggesting the absence of a quorum. Each quorum call lasted at least six minutes, giving him the opportunity to seek rest and relief.

On May 29, 1908, with the temperature above ninety degrees in the chamber, La Follette talked on into the night, fortifying himself with turkey sandwiches and eggnog from the Senate restaurant. At one point, he took a sip of eggnog and immediately cast it away, exclaiming that it had been drugged. (Chemical analysis later revealed that the amount of ptomaine in the glass would certainly have killed the Wisconsin senator, but the culprit was never identified.) [19]

After thirty-two roll calls, Senator Nelson Aldrich, whose bill was the target of Senator La Follette's filibuster, raised a point of order, based on the 1897 precedent, to the effect that no business had intervened since the last quorum call. Senator Aldrich argued that debate by itself was not "intervening business." The Senate upheld the point of order, 35 to 8, thereby reversing an 1872 precedent to the contrary. This ruling made it more difficult for La Follette to continue, and his filibuster finally came to an end a few hours later.

Again, in 1915, Utah Senator Reed Smoot set a new one-man record for the longest *continuous* filibuster, speaking for eleven hours and thirty-five minutes without rest and without deviating from the subject at hand. His action was part of a filibuster against the administration's ship purchase bill. The debate consumed thirty-three days and resulted in the failure of three important appropriations bills.[20]

In May 1916, the Committee on Rules reported a resolution providing for cloture by two-thirds of those voting, but the resolution, although debated, did not come to a vote.

In 1916, and again in 1920, the Democratic party's national platforms stated, "We favor such alteration of the rules of procedure of the Senate of the United States as will permit the prompt transaction of the Nation's legislative business." [21]

The final impetus for a cloture rule came as a result of a 1917 filibuster—one of the most famous in Senate annals—against an administration measure permitting the arming of American merchant vessels for the duration of the World War. Actually, this filibuster had been immediately preceded by the delaying tactics of Republicans, whose strategy was to stall the Senate's business and force a special session of Congress. As reported by the *New York Times* on February 23, 1917, "the Republicans in caucus this morning unanimously agreed on a course that means a general filibuster against practically all legislation, so that through the failure of this legislation to reach enactment by March 4 a special session would have to be called."

On the day of the Republican conference, President Woodrow Wilson issued a proclamation calling for a special session of the Senate, to begin at noon on March 5. The Republicans, however, "made it plain that what they wanted was a sitting of both houses," not just the Senate. For the Senate alone to sit in special session would permit only the consideration of treaties and nominations, matters under the Senate's sole jurisdiction. According to the *Times* story, Republican senators "dislike the idea of leaving President Wilson, clothed with large powers, to act for nine months in a great international crisis without legislative advice." [22]

Over the next several days, the Republicans held to the course planned. From February 23 through 28, they debated a revenue bill to defray the increased expenses of the army and navy. Meanwhile, on February 26, President Wilson appeared before a joint session to request legislation authorizing the arming of merchant ships. Referring to the sinking of two American merchant vessels, the *Housatonic* and the *Lyman M. Law*, the president stated:

> No one doubts what it is our duty to do. We must defend our commerce and the lives of our people in the midst of the present trying circumstances, with discretion but with clear and steadfast purpose. . . . Since it had unhappily proved impossible to safeguard our neutral rights by diplomatic means against the unwarranted infringements they are suffering at the hands of Germany, there may be no recourse but to armed neutrality. . . .
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> . . . I request that you will authorize me to supply our merchant ships with defensive arms, should that become necessary, and with the means of using them, and to employ any other instrumentalities or methods that may be necessary and adequate to protect our ships and our people in their legitimate and peaceful pursuits on the seas. I request also that you will grant me . . . a sufficient credit to enable me to provide adequate means of protection where they are lacking, including adequate insurance against the present war risks.[23]

Debate on the revenue bill continued. Thirty-five roll-call votes occurred between the hours of 10:00 a.m. Wednesday, February 28, and 12:45 a.m. Thursday, March 1, when the bill passed. Thirty-three of these were back-to-back votes beginning at

around eight o'clock on Wednesday evening and continuing over the next four hours and forty minutes.[24]

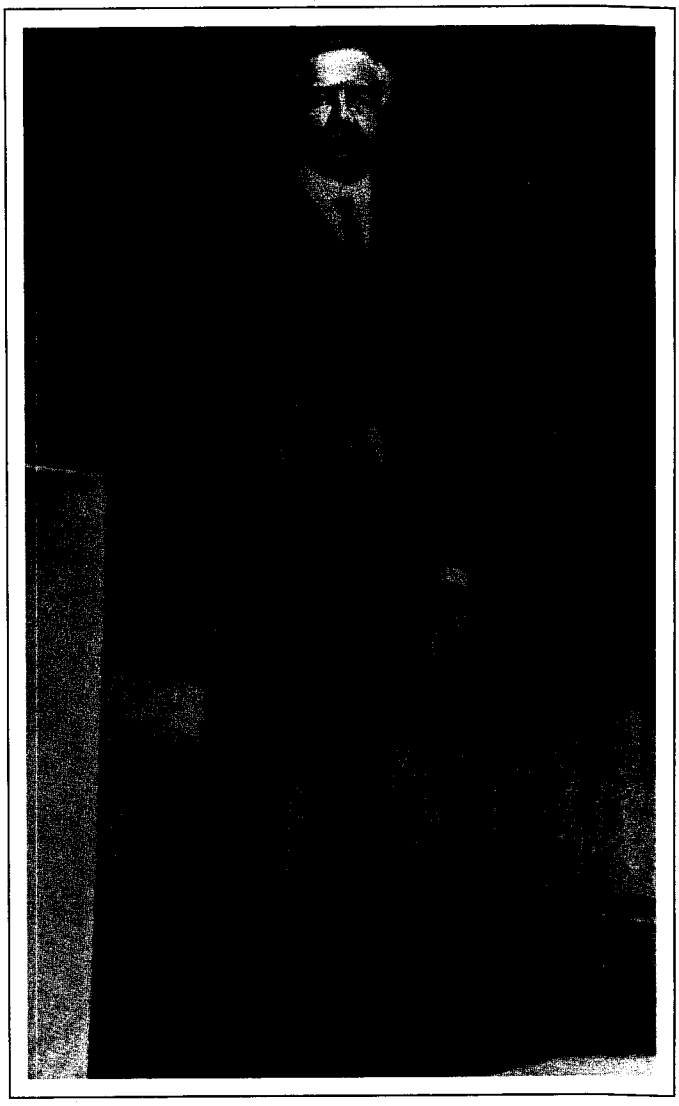
The Republicans ended their obstructionist tactics on March 1, following a prolonged reading of the *Journal*. According to Franklin L. Burdette, an expert on Senate filibusters, it was claimed publicly that "patriotic motives had prevailed to bring an end to dilatory tactics; but a skeptic in politics may wonder whether the regular Republicans had not simply realized that their filibuster would be conveniently assumed by other tongues." [25]

Later that day, Senator Henry Cabot Lodge of Massachusetts referred to an Associated Press news story reporting "a dispatch from the secretary of state for foreign relations in Germany inviting Mexico and Japan to unite with them in war upon the United States." Lodge introduced a resolution, requesting the president to inform the Senate whether the note signed "Zimmermann" referred to in the newspapers was "authentic" and calling on Wilson to supply the Senate with any other information "relative to the activities of the Imperial German Government in Mexico." [26]

News of the astounding and provocative German message electrified the country, and a wave of indignation swept the land, building strong popular support for action.

On March 2, the Senate began debating the Senate bill that had been reported from the Foreign Relations Committee, authorizing the president to supply American merchant ships with defensive arms. Because Senator William J. Stone, chairman of the committee, opposed the bill, he asked Senator Gilbert M. Hitchcock of Nebraska to act as its floor manager. The bill had less than forty-eight hours in which to pass or it would die with the session's end at noon on March 4.[27]

Senators George W. Norris of Nebraska, Asle J. Gronna of North Dakota, Robert M. La Follette of Wisconsin, and other opponents feared that if the legislation became law it would lead the country into war. The debate went on past midnight, and, at 12:40 a.m. on March 3, the Senate recessed until 10 a.m. the same day, when the debate was renewed. It raged furiously through the afternoon and night, right up to the stroke of noon on March 4, when the Senate adjourned sine die. Opponents of the armed merchant ship bill did not resort to dilatory



In 1917, Senator Gilbert M. Hitchcock led the fight for the Armed Ship bill, which was blocked by a Senate filibuster. *U.S. Senate Historical Office*

tactics to defeat the legislation. Only one roll-call vote and six quorum calls interrupted the debate during the twenty-six-hour session.

Senator Stone, in opposing the bill, questioned its constitutionality:

> The Constitution vests the war-making power alone in the Congress. It is a power the Congress is not at liberty to delegate. . . . I believe this law would contravene the Constitution. . . . The power to be granted [to the president] is granted in terms too broad, too sweeping. . . . No limit whatsoever is placed upon the "instrumentalities and methods" that the President may employ, and no direction whatsoever is given by Congress as to the manner in which this authority may be exercised. The President would be given an absolutely free hand to employ any instrumentality and to adopt any method he saw fit.[28]

Stone spoke for four hours against the bill. As the evening wore on, Senator Hitchcock sought in vain to obtain unanimous consent to vote at a given hour. He sought consent to limit speeches to fifteen minutes "beginning at 9 o'clock," "at 10 o'clock," "at midnight," "at 1 o'clock," "at 2 o'clock in the morning," "at 4 o'clock in the morning," but each time, his request was met with an objection. Finally, in exasperation, he stopped trying, saying: "Mr. President, I am not going to do anything here to kill time. I want to develop the fact that there is a deliberate intention to filibuster the bill to death. If Senators are willing to take that responsibility I want them to take it." Senator George Norris retorted that he "would not hesitate to kill the bill" if he could. "But the fact is," he said, "that most of the time has been taken up by those who favor the bill." Norris objected "to having the debate run on for a couple of days by those who are in favor of the bill and then an effort be made to gag those who are opposed to it. . . . I do object to a limitation of any kind." [29]

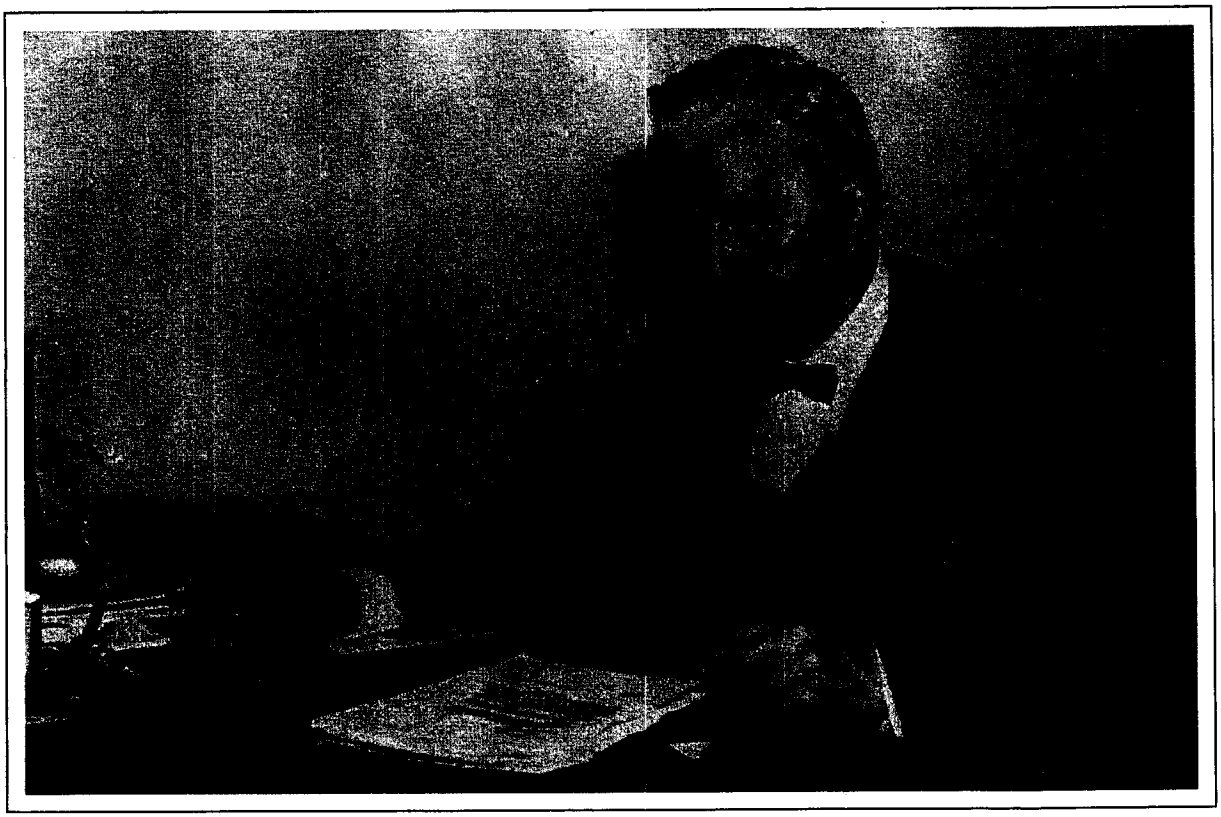
Invective flowed freely as the angry majority tried to silence the small but unsubmissive band of opposition senators, who accused the measure's supporters of monopolizing the time. Senator Wesley L. Jones of Washington referred to "the apparent filibuster that seems to have been carried on by those who profess to be friends of the bill. The Senator [Mr. Hitchcock] in charge of it wasted half an hour's time, that anybody might have known would be wasted, in trying to reach an agreement to limit debate and to vote. . . . the passage of this measure should not be hurried." [30]

At 3:20 a.m. on March 4, Senator Hitchcock asked Senator Joseph T. Robinson of Arkansas to present a statement for the *Record* "to show that nine-tenths of the Senate are ready to vote and anxious to vote and want to vote for this bill, but that they are being prevented by 12 Senators . . . who refuse us an opportunity to vote." When Robinson presented the statement, signed by seventy-five senators favoring the bill, Minnesota Senator Moses E. Clapp responded angrily,

> I think it is unfair and unjust to men who have no purpose to delay this bill, who have sat here for over 24 hours seeking to get an opportunity to make a fair speech upon this question, to put them in the attitude of being responsible for delaying the bill, when the fact is we have not had an opportunity to speak upon the bill.

Clapp accused the majority party of displacing the bill "time and again" since it came "into the Senate Friday afternoon," thus denying senators the opportunity "of presenting their views to the Senate and to the country." [31] In his opinion, the bill represented "a step along that pathway which has wrecked every great republic." In fact, the nation was "so thoroughly today in the hands of commercialism that we propose to lend ourselves to a war for commercialism." [32]

Senator Harry Lane of Oregon deplored the "round robin," which had been signed



Senator George Norris helped to filibuster the 1917 Armed Ship bill. *U.S. Senate Historical Office*

by seventy-five senators. In his opinion, the statement had "caused a good deal of bitterness" and "left a bad taste in the mouths of some of those who signed it, as well as those who did not sign it," since its purpose was "to coerce" senators into supporting the legislation.[33]

Senator Norris gained the floor at 7:45 a.m. on March 4. Rejecting the charge that a filibuster was in progress, he stated: "[I]t seems to me it comes with poor grace to say, 'You are filibustering,' when the very means used in a filibuster have never been resorted to. You have had at least a dozen unanimous-consent agreements to expedite business during the night." Noting that there were "just five Senators on the Democratic side of the Chamber," Norris asserted, "if there were a filibuster . . . the Sergeant at Arms would be scurrying around over the city, arresting Senators and bringing them in here. . . ." "Everybody concedes" an extra session to be "absolutely necessary," Norris declared, asking, "what is the great importance of hasty action on this legislation?" [34]

Expressing opposition to the bill, Norris said, "it abdicates our power; it gives to the President in effect the right to make war. . . . Do we want to surrender to the Executive the power that is ours under the Constitution?" Norris then quoted from *Constitutional Government: A Study in American Politics*, by none other than Woodrow Wilson himself:

> Members of Congress ought not to be censured too severely, however, when they fail to check evil courses on the part of the Executive. They have been denied the means of doing so promptly and with effect. . . .

It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees.

Quoting further from Wilson's doctoral dissertation, Norris drove home the necessity for thorough discussion within the legislative body:

Unless Congress have and use every means of acquainting itself with the acts . . . of the administrative agents of the Government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct.[35]

As the hours of morning wore on, the filibuster shifted from the opposition to the proponents of the bill. With the noon hour approaching, Hitchcock sought to secure unanimous consent for a vote, but La Follette, who had been unable to get the floor, vowed to object to a vote until he was allowed to speak. According to Franklin Burdette, angry Democrats, realizing the futility of trying to reach a vote, "determined to talk themselves rather than give [La Follette] an opportunity to speak before crowded galleries in the final hours of the session."[36] At 11:43 a.m., Hitchcock made one final request to vote at 11:45. When La Follette objected, Hitchcock put in a quorum call to chew up additional time. The few remaining minutes of the session were spent in wrangling, with Hitchcock obstinately holding the floor against La Follette's vigorous protests. The clock struck twelve, the session ended, and the Armed Ship bill was dead.[37]

The bill's failure stimulated a great public outcry, which associated the Senate's right to free and unlimited debate with treason. President Wilson, on March 4, 1917, angrily responded to the Senate's action by making one of the most notable of presidential attacks on the Senate and its procedures. He said, in part:

The termination of the last session of the Sixty-fourth Congress by constitutional limitation discloses a situation unparalleled in the history of the country, perhaps unparalleled in the history of any modern government. In the immediate presence of a crisis fraught with more subtle and far-reaching possibilities of national danger than any other the government has known within the whole history of its international relations, the Congress has been unable to act either to safeguard the country or to vindicate the elementary rights of its citizens. More than five hundred of the five hundred and thirty-one members of the two houses were ready and anxious to act; the House of Representatives had acted by an overwhelming majority; but the Senate was unable to act because a little group of eleven Senators had determined that it should not.

The Senate has no rules by which debate can be limited or brought to an end, no rules by which dilatory tactics of any kind can be prevented. A single member can stand in the way of action if he have but the physical endurance. The result in this case is a complete paralysis alike of the legislative and of the executive branches of the government.

The inability of the Senate to act has rendered some of the most necessary legislation of the session impossible, at a time when the need for it was most pressing and most evident. . . . It would not cure the difficulty to call the Sixty-fifth Congress in extraordinary session. The paralysis of the Senate would remain. . . . The Senate cannot act unless its leaders can obtain unanimous consent. Its majority is powerless, helpless. . . .

Although as a matter of fact, the nation and the representatives of the nation stand back of the Executive with unprecedented unanimity and spirit, the impression made abroad will, of course, be that it is not so and that other governments may act as they please without fear that this government can do anything at all. We cannot explain. The explanation is incredible. The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. *A little group of willful men*, representing no opinion but their own, have rendered the great government of the United States helpless and contemptible.

The remedy? There is but one remedy. The only remedy is that the rules of the Senate shall be so altered

that it can act. The country can be relied upon to draw the moral. I believe the Senate can be relied on to supply the means of action and save the country from disaster.[38]

Even before the filibuster which killed the Armed Ship bill, the president had planned to call the Senate into special session to deal with a pending treaty. Nonetheless, when the Senate met in extraordinary session the day following Wilson's inauguration, there was only one item of business on its members' minds: the cloture rule. Professor Thomas W. Ryley in his book, *A Little Group of Willful Men*, noted that, at the time, most senators did not want to undermine the filibuster, as many of them had taken advantage of it in the past, but "with an aroused public, there was almost as much resentment over the filibuster as there was over the fact that American rights had not been defended to the utmost." According to Ryley, when the president announced that the rules of the Senate would have to be revised before he would call a special session of the entire Congress to deal with the war emergency, "the fate of unlimited debate was sealed." [39]

The principal responsibility for the cloture resolution rested with the new Democratic majority leader, Thomas Martin of Virginia. Under his guidance, a bipartisan committee of the Senate's leaders drew up a proposal providing that a vote by two-thirds of those present and voting could invoke cloture on a pending measure. Under the new rule, cloture would begin with submission of a petition signed by sixteen members, followed two days later by a vote. If the requisite two-thirds approved the proposal, each senator could thereafter speak for a maximum of one hour, and no amendments could be made except by unanimous consent. Even if this rule had been in effect at the time of the Armed Ship bill filibuster, however, it could not have saved the measure, for the amount of time required under the procedure was greater than that remaining in the life of that Congress.

It was clear from the beginning of the March 1917 debate that the rule would pass by an overwhelming margin. But, as Burdette observed, senators were wary and cautious. "Public outcry against the Armed Ship filibuster might change the precedents of more than a century, but it should not be allowed to sweep them altogether away. Free speech in the Senate should still be the rule and cloture the exception." There were those who advocated cloture by a majority, but they were overridden by Democrats and Republicans who desired a more prudent change in the rules governing unlimited debate. Senate leaders would act to "curb filibustering, but drastic action they would not support." [40]

I think it is useful, in light of subsequent developments and considering the overstated nature of President Wilson's attacks on the Senate, to look at the arguments of the proposed rule's three lone opponents.

Illinois Senator Lawrence Sherman had been an avowed supporter of the Armed Ship bill. He took the position, nonetheless, that President Wilson's attack was unfair. On March 8, 1917, he declared: "There is in the memory of no person now having a seat in the Senate, delayed action or a filibuster which destroyed meritorious legislation, save during the last few weeks of the short (second) session, when Congress automatically adjourns on the succeeding fourth day of March of that year. . . . There is a limitation," he continued, "where mere exhaustion applies the cure. It is always in the power of the Senate to apply the remedy by continuous sessions, except the last few days named." Sherman argued that the rules were to be made "the scapegoat for the deficiencies of human nature," and that their amendment had been raised "solely for the purpose

of breaking down the rule of the Senate and riveting Executive control on the Senate as firmly as on the House." Senator Sherman's basic point was that, if the administration had sent the bill in "due time, it would not have been possible," in his words, "for those senators to have defeated it by delaying a roll call until the adjournment." [41]

A second opponent, Senator La Follette, also took issue with the practice of holding important bills, such as appropriations measures, in committee until the eleventh hour in order to build up pressure for their speedy and uncritical consideration and passage. As the debate on the cloture rule was drawing to a close, La Follette presented a classic statement in defense of unlimited debate. He argued:

> Mr. President, believing that I stand for democracy, for the liberties of the people of this country, for the perpetuation of our free institutions, I shall stand while I am a Member of this body against any cloture that denies free and unlimited debate. Sir, the moment that the majority imposes the restriction contained in the pending rule upon this body, that moment you will have dealt a blow to liberty, you will have broken down one of the greatest weapons against wrong and oppression that the Members of this body possess. This Senate is the only place in our system where, no matter what may be the organized power behind any measure to rush its consideration and to compel its adoption, there is a chance to be heard, where there is opportunity to speak at length, and where, if need be, under the Constitution of our country and the rules as they stand today, the constitutional right is reposed in a Member of this body to halt a Congress or a session on a piece of legislation which may undermine the liberties of the people and be in violation of the Constitution which Senators have sworn to support. When you take that power away from the Members of this body, you let loose in a democracy forces that in the end will be heard elsewhere, if not here. [42]

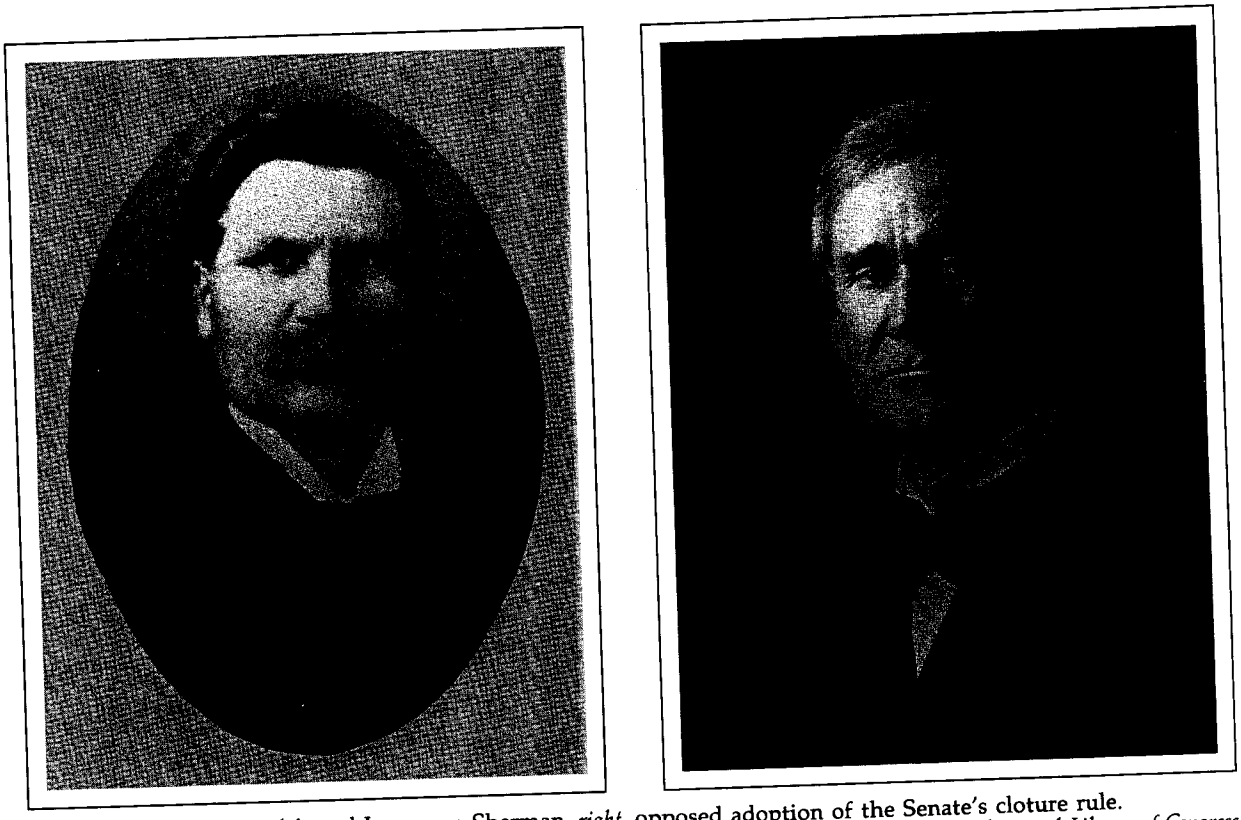
The third opponent, Senator Asle Gronna, complained that he had not been afforded the opportunity to speak on the Armed Ship bill. "The Senator [Hitchcock] having that bill in charge took up nearly all the time and even refused to yield for questions. He occupied an hour and three-quarters . . . in denunciation of those who stood ready to carry out their honest beliefs." As to the proposed cloture rule, Gronna said that he did not wish "to do anything that will even have the slightest tendency to destroy in the smallest degree the liberty and freedom of this great Government of ours," concerning which he passionately declared, "too much precious blood has been shed to establish it; too many lives were sacrificed to perpetuate it; and I shall not by any act of mine do anything that will cause any disturbance or that will have the least tendency to destroy it as a democracy." Referring to those who spoke unkindly of the opponents of the Armed Ship legislation, Gronna exclaimed, "Forgive them, for they know not what they do!" [43]

By a vote of 76 to 3, on March 8, 1917, after only six hours of debate, the Senate adopted its first cloture rule.

In the months that followed, the United States entered World War I, and, during the second session of the Sixty-fifth Congress, the Senate broke all previous records by remaining in session for 354 days between December 1917 and the following November. By the time the war had ended in November 1918, it was becoming clear that the cloture rule was not going to be effective. Several months earlier, Senator Oscar Underwood of Alabama, soon to become the Democratic floor leader, introduced a resolution reestablishing the use of the "previous question" and limiting debate during the wartime period. The Rules Committee favorably reported the Underwood resolution, but it failed of passage by a vote of 34 to 41.

A year later, on November 15, 1919, the Senate adopted its first cloture motion and, four days later, brought to an end the fifty-five-day debate on the Treaty of Versailles.

In the years that followed, however, cloture was used only sparingly. From 1919



Senators Asle Gronna, *left*, and Lawrence Sherman, *right*, opposed adoption of the Senate's cloture rule.
State Historical Society of North Dakota and Library of Congress

through 1962, the Senate voted on cloture petitions on twenty-seven occasions and invoked cloture just four times.

On November 29, 1922, the Senate's Republican whip, Charles Curtis of Kansas, tried a new approach to limit debate. In the midst of a four-day filibuster against an antilynching bill, Democratic Leader Underwood, who supported that filibuster, moved to adjourn immediately upon the convening of the Senate. Curtis then raised a point of order that the motion was dilatory. He said, "I know we have no rule of the Senate with reference to dilatory motions. We are a legislative body, and we are here to do business and not retard business." He then observed that "it is a well-settled principle that in any legislative body where the rules do not cover questions that may arise, general parliamentary rules must apply." He argued that in the House, Speaker Reed had ruled, in the absence of rules to the contrary, that dilatory motions were out of order. Vice President Calvin Coolidge, in the chair at the time, declined to rule on Curtis' specific point of order. Today, except in cases where the Senate is operating under the cloture rule, the rules and precedents do not specifically prohibit dilatory motions as such.[44]

One of the most notable of the earlier campaigns to devise an effective debate limitation rule began here in the Senate chamber on March 4, 1925. The occasion was the inaugural address of the new vice president, Charles Dawes. By that time, Dawes had already earned a reputation as an effective administrator due to his successful banking career and his service as the first director of

Vice President Charles Dawes in 1925 pressed for stricter Senate rules to control debate.
Library of Congress

the Budget Bureau. A man of commanding personality, the vice president was often called by his campaign nickname of "Hell an' Maria," one of his favorite expressions. During his term of office, Dawes participated more actively in the Senate's business than most of his predecessors.

Vice President Dawes began his activist role with a statement that shocked the assembled senators. He told them that it was his duty as their presiding officer "to call attention to defective methods in the conduct of (the Senate's) business." Accordingly, he observed that the existing cloture rule, "which at times enables Senators to consume in oratory those last precious minutes of a session needed for momentous decisions, places in the hands of one, or of a minority of senators, a greater power than the veto power exercised under the Constitution by the President of the United States, which is limited in its effectiveness by the necessity of an affirmative two-thirds vote." Filled with indignation, the vice president assaulted his audience with a barrage of rhetorical questions: "*Who would dare*," he asked:

> to contend that under the spirit of democratic government the power to kill legislation providing the revenues to pay the expenses of government should, during the last few days of a session, ever be in the hands of a minority, or perhaps one senator? . . . *Who would dare* oppose any changes in the rules necessary to insure that the business of the United States should always be conducted in the interests of the Nation and never be in danger of encountering a situation where one man or a minority of men might demand unreasonable concessions under threat of blocking the business of the Government? *Who would dare* maintain that in the last analysis the right of the Senate itself to act should ever be subordinated to the right of one senator to make a speech? [45]

On the following day, Senator Underwood introduced a resolution to replace the 1917 cloture rule. The proposed provisions, which harkened back to the original 1789 rule on the "previous question," were as follows:

> 1. There shall be a motion for the previous question which, being ordered by a majority of Senators voting, if a quorum be present, shall have the effect to cut off all debate and bring the Senate to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after the previous question shall have been ordered on its passage, for the Presiding Officer to entertain and submit a motion to commit, with or without instructions, to a standing or select committee.
>
> 2. All motions for the previous question shall, before being submitted to the Senate, be seconded by a majority by tellers, if demanded.
>
> 3. When a motion for the previous question has been seconded, it shall be in order, before final vote is taken thereon, for each Senator to debate the propositions to be voted upon for one hour.[46]

To build support for his reform campaign, Vice President Dawes set out on a cross-country tour. In the spirit of his great-great-grandfather, William Dawes, who rode with Paul Revere on that fateful night in 1775 to warn of the impending arrival of British

troops, Charles Dawes sought to sound the alarm against the dangers he perceived in the Senate's rules.

At one stop, in Boston, the vice president addressed a gathering on this subject. In the presence of Massachusetts Senator William Butler, he asked that those in the audience who favored a rules change stand up in order to make their views known to their senator. As the supportive cheers died down, the vice president literally pulled the embarrassed senator from his chair, exclaiming, "I want to hear what Senator Butler has to say about this." The freshman senator quickly observed that he was in favor of a reform of the Senate's rules, particularly the seniority rule.[47]

Several weeks later, Vice President Dawes announced that he intended to take his campaign to Kansas, home of Senate Republican floor leader Charles Curtis. There he promised to hold a "monster mass meeting," and he expressed the hope that the senator would be present to see his constituents "react." Senator Curtis, who was also chairman of the Rules Committee, told a reporter that he thought the Dawes-Underwood proposal stood little chance, even though he was willing to support it. Recalling his own earlier efforts to achieve majority or three-fifths cloture, Senator Curtis reminded the vice president that he had been able to find only two other Republican senators willing to join him in support of such a proposal. The Kansas senator correctly predicted that the Dawes campaign would fail.[48]

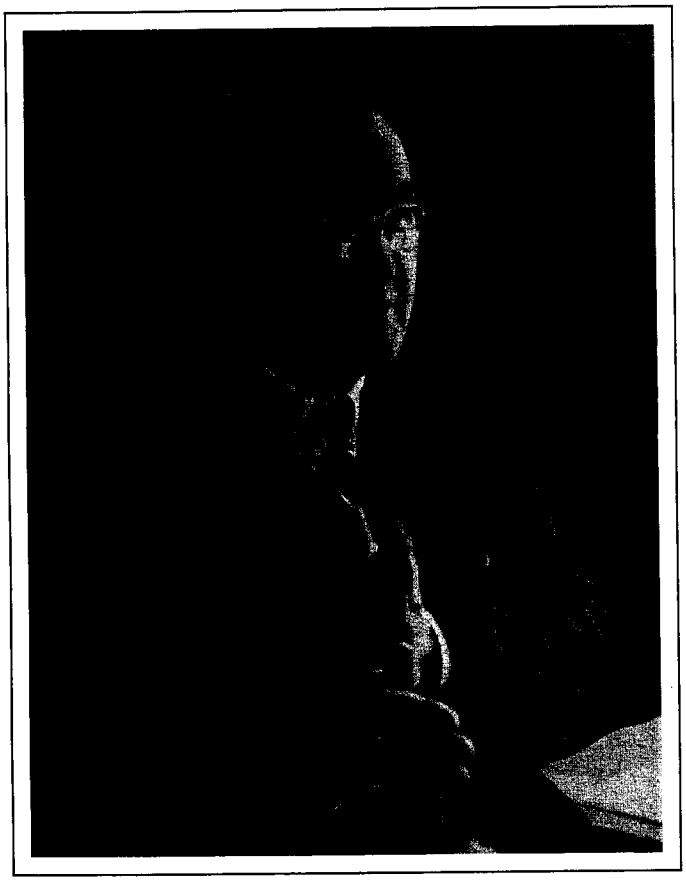
Later in 1925, Democratic Leader Joseph Robinson, joining members on both sides of the aisle, argued that no change in the rules was "necessary to prevent irrelevant debate." He noted that general parliamentary practice "contemplates that a speaker shall limit his remarks to the subject under consideration," and he called on the chair to require that debate be germane. (Prior to 1964, there was no rule requiring germaneness of debate, and the chair had ruled on numerous occasions that there was no requirement for debate to be germane.)[49]

Although executive branch reorganization acts in 1939 and 1945 contained provisions limiting debate to ten hours, equally divided between supporters and opponents, they applied only in the case of a concurrent resolution disapproving a presidential reorganization plan. The language of those statutes acknowledged the constitutional right of the Senate to change this requirement "at any time in the same manner and to the same extent as in the case of any other (Senate) rule." Later extensions of the Reorganization Act included similar limitations on debate.

By 1948, a series of rulings over the years had rendered the 1917 cloture rule almost worthless, particularly those rulings that held that it could not be applied to debate on procedural questions. On August 2 of that year, President pro tempore Arthur Vandenberg sustained a point of order against a petition to close debate on a motion to consider an anti-poll-tax bill. In doing so, he declared that, in the final analysis, the Senate had no cloture rule at all. He noted that "a small but determined minority can always prevent cloture under the existing rules." At that point, the Republican Conference appointed a committee of ten senators to recommend revision of the existing cloture rule.[50]

In 1949, control of the Senate returned to the Democratic party. Fresh from his surprise election victory, President Harry S. Truman sought to clear the way for a broad civil rights program, and his first step was to push for a liberalization of the cloture rule. His efforts produced a bitter battle at the beginning of the Eighty-first Congress.

After lengthy hearings in the Rules Committee, the majority leader, Scott Lucas of Illinois, moved on February 28 to take up the resolution. This action set off a filibuster



Senator Clinton Anderson contended that the Senate had the right to adopt a new set of rules at the beginning of each Congress. *Library of Congress*

which ran until March 15, when it was voluntarily halted. After three days of further debate, the Senate adopted a compromise measure that proved to be less usable than the one it replaced. It required that two-thirds of the *entire* Senate vote for cloture, rather than two-thirds of those present and voting. The new rule differed from the old in that it allowed cloture to operate on any pending business or motion with the exception of debate on motions to change the Senate rules themselves. Previously, the cloture rule had been applicable to those motions. This meant that future efforts to change the cloture rule would themselves be subject to extended debate without benefit of the cloture provision. Previously, under the old rule, debate limitation on a rules change had at least been theoretically possible. This change led critics of the revised rule to develop a new strategy, which became apparent in 1953, at the beginning of the Eighty-third Congress.

At the opening of that Congress, opponents of unlimited debate argued that the Senate was not a continuing body. According to the Rules Committee's history of the cloture rule, they relied on a claim by Montana Senator Thomas Walsh in 1917 that "each new Congress brings with it a new Senate, entitled to consider and adopt its own rules." They planned "to move for consideration of new rules on the first day of the session and, upon the adoption of this motion, to propose that all the old rules be adopted with the exception of Rule XXII. Rule XXII was to be changed to allow a majority of all senators (49) to limit debate after 14 days of discussion." On January 3, 1953, Senator Clinton Anderson of New Mexico moved that the Senate begin considering the adoption of rules for the Senate of the Eighty-third Congress. Ohio Senator Robert Taft moved to table the Anderson motion. During the ensuing debate, Senator Paul Douglas of Illinois explained the advantages of the Anderson proposal over the existing system. He pointed out that the 1949 rule "ties our hands once the Senate is fully organized. . . . For under it any later proposal to alter the rules can be filibustered and never be permitted to come to a vote. . . . Therefore, if it be permanently decided that the rules of the preceding Senate apply automatically as the new Senate organizes, we may as well say farewell to any chance either for Civil Rights legislation or needed changes in Senate procedure." [51]

Opponents of the Anderson motion contended that the Senate is a "continuing body," bound by the rules of earlier Senates. To support their argument, they pointed out:

(1) Only one-third of the Senate is elected every two years.

(2) The Constitution did not provide for the adoption of new rules every two years.

(3) If the Senate had had the power to adopt new rules, it had lost that power through disuse.

(4) The Supreme Court . . . had decided that the Senate was a "continuing body."

The Anderson motion was finally tabled by a vote of 70 to 21, on January 7, 1953.[52]

On January 3, 1957, Senator Anderson moved, at the beginning of the Eighty-fifth Congress, to consider the adoption of new rules. On a motion by Senate Majority Leader Lyndon Johnson, the Anderson motion was tabled by a roll-call vote of 55 to 38. During the debate, however, Vice President Richard Nixon said that, in "the opinion of the Chair," although the Senate rules had been continued from one Congress to another, "the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules . . . cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress." He said that, in his opinion, the current Senate could not be bound by any previous rule "which denies the membership of the Senate the power to exercise its constitutional right to make its own rules." Nixon stated his belief that the section of Rule XXII forbidding limitation of debate on proposals to change the rules was unconstitutional. He noted, however, that only the Senate could officially determine the constitutionality of the rule.[53]

During the Eighty-fifth Congress, in 1957 and 1958, eight resolutions were introduced to amend the cloture rule. At the beginning of the Eighty-sixth Congress, Senate Majority Leader Johnson offered, and the Senate adopted by a 72 to 22 roll-call vote, a resolution to amend Senate Rule XXII. Approved on January 12, 1959, after four days of debate, the resolution permitted two-thirds of the senators present and voting to close debate, even on proposals for rules changes. It also added to Rule XXII, "The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules." [54]

As a way to expedite business, the Senate, in 1964, adopted a requirement that debate be germane to the business before the Senate during certain hours of each day's session. Known today as the "Pastore Rule," this important innovation was proposed in a resolution introduced on February 19, 1963, by Senator John O. Pastore of Rhode Island. The Rules Committee held hearings and reported the resolution with amendments reducing the period of germane debate from four hours to three, limiting the germaneness requirement to only one period "on any calendar day," and preserving the practice of permitting nongermane amendments (except on appropriation bills, which continued to require amendments to be germane).[55] On January 10, 1964, the committee amendments were adopted en bloc without debate. That same day, Senator Pastore offered an amendment, which was agreed to, clarifying his intent that the resolution apply only to debate and not to the germaneness of amendments. He explained the need for some limitation on free-wheeling debate, saying:

It is incompatible with orderly, constructive procedure for a Senator who happens to have prepared a press release which he wishes to make public, in order to meet the newspaper deadlines, to proceed, in the Senate Chamber, to recite and discuss his press release while many other Senators wait to participate in the debate on the business pending before the Senate. Sometimes such interruptions occur hour after hour, while individual Senators talk about many other subjects, ranging perhaps from the price of eggs to conditions on the Great Lakes.[56]

Senator Everett Dirksen of Illinois was among those senators who opposed the rules

change. His concern was shared by several of his colleagues, when he said that he had "great pride in the freedom of expression in the Senate" and that, if the adoption of the resolution did not "bring about what its sponsors hope it will achieve," they would "seek further modification of the rules in order to bring it about." The resolution was adopted, as amended, on January 23, 1964, by a vote of 57 to 25.[57]

Today, the provision constitutes paragraph 1(b) of Rule XIX of the standing rules. Although it has not had the effect on Senate debate that either its proponents had hoped or its detractors had feared, it, nevertheless, represented a useful change in the rules.

Efforts to amend the cloture rule failed again in the Eighty-eighth and Eighty-ninth congresses. On January 11, 1967, Senator George McGovern of South Dakota introduced a resolution providing for three-fifths of the senators present and voting to end debate. According to the Senate's published history of the cloture rule:

> On January 18, Senator McGovern proposed that the Senate immediately vote to end debate on the motion to consider his resolution and if a majority vote occurred, the Senate would then debate the resolution itself. Mr. McGovern justified this procedure by arguing that the Senate under the Constitution could at the beginning of a new session, adopt new rules by a majority vote. Senator Dirksen raised a point of order against the McGovern motion. . . .
>
> Supporters of McGovern had hoped for a favorable ruling from Vice President Humphrey, but Humphrey stated: ". . . the precedent, . . . namely, that the Chair has submitted constitutional questions to the Senate for its decision—the Presiding Officer believes to be a sound procedure. It has not been considered the proper role of the Chair to interpret the Constitution for the Senate. Each Senator takes his own obligation when he takes his oath of office to support and defend the Constitution. The Presiding Officer is aware of no sufficient justification for reversing this procedure."
>
> Humphrey then asked the Senate if the point of order should be sustained. He also said this question was debatable but subject to a tabling motion, which is not debatable; whereupon McGovern moved to table the Dirksen point of order.[58]

According to the vice president, if the Senate had adopted the tabling motion, it would have acknowledged that the McGovern motion was constitutional, meaning that the Senate had the right to adopt new rules by majority vote at the beginning of a new Congress. The Senate, however, rejected McGovern's tabling motion by a 37 to 61 roll-call vote and then sustained Dirksen's point of order by a 59 to 37 roll-call vote. The Senate thus determined that McGovern's motion was unconstitutional. A subsequent attempt to invoke cloture failed.[59]

At the opening of the Ninety-first Congress, in 1969, those who sought to alter Rule XXII tried a different approach. Senators Frank Church of Idaho and James Pearson of Kansas introduced a resolution providing that cloture could be invoked by three-fifths, rather than two-thirds, of those present and voting. In order to succeed, their plan would need a ruling by Vice President Humphrey that cloture required only a simple majority when a rules change was being considered at the opening of a new Congress. On January 14, 1969, following the procedure outlined in Rule XXII, Senator Church and twenty-four other senators filed a cloture motion on the motion to consider the resolution. Senator Church then asked the chair whether a cloture vote by a majority of the senators present and voting—but less than the two-thirds required by Rule XXII—would be sufficient.

Church contended that requiring a two-thirds vote for cloture on a rules change was unconstitutional, because it restricted the right of a majority of the Senate, under the Constitution, to determine its rules at the beginning of a new Congress.

The vice president agreed, declaring, "On a par with the right of the Senate to deter-

mine its rules, though perhaps not set forth so specifically in the Constitution, is the right of the Senate, a simple majority of the Senate, to decide constitutional questions." Humphrey continued:

> If a majority . . . but less than two-thirds, of those present and voting, vote in favor of this cloture motion, the question whether the motion has been agreed to is a constitutional question. The constitutional question is the validity of the Rule XXII requirement for an affirmative vote by two-thirds of the Senate before a majority of the Senate may exercise its right to consider a proposed change in the rules. If the Chair were to announce that the motion for cloture had not been agreed to because the affirmative vote had fallen short of the two-thirds required, the Chair would not only be violating one established principle by deciding the constitutional question himself, he would be violating the other established principle by inhibiting, if not effectively preventing, the Senate from exercising its right to decide the constitutional question. . . .
>
> . . . the Chair informs the Senate that in order to give substance to the right of the Senate to determine or change its rules and to determine whether the two-thirds requirement of Rule XXII is an unconstitutional inhibition on that right at the opening of a new Congress, if a majority of the Senators present and voting but fewer than two-thirds, vote in favor of the pending motion for cloture, the Chair will announce that a majority having agreed to limit debate on Senate Resolution 11, to amend Rule XXII, at the opening of a new Congress, debate will proceed under the cloture provisions of that rule.[60]

Two days later, the Senate voted 51 to 47 to invoke cloture. Although the vice president ruled that cloture had been invoked by the majority vote, his decision was appealed and reversed by the Senate on a roll-call vote of 45 to 53. The Senate subsequently failed to achieve the necessary two-thirds vote to invoke cloture.

At the opening of the Ninety-second Congress, Senators Church and Pearson introduced a resolution to reduce the number of senators required to curtail debate from two-thirds to three-fifths of those present and voting. They again hoped the chair would rule that a simple majority was sufficient to invoke cloture on a rules change at the beginning of a new Congress. Vice President Spiro Agnew, however, preferred to refer such questions to the full Senate for its decision. The proponents of the Church-Pearson resolution, therefore, had to comply with the two-thirds requirement they hoped to change.

Attempts to invoke cloture failed, and debate on the motion to consider the resolution dragged on for six weeks in spite of efforts by a number of senators to achieve a compromise. Louisiana Senator Allen Ellender, for example, suggested that a three-fifths vote be allowed to end debate on conference reports and appropriation bills. I was majority whip at the time and suggested that cloture be invoked by three-fifths of all senators. Subsequent efforts to close debate, on March 2 and March 9, failed to achieve the necessary two-thirds, by votes of 48 to 36 and 55 to 39, respectively. Appealing the decision of the presiding officer, Allen Ellender, that the cloture attempt had failed to receive the necessary two-thirds majority, Senator Jacob Javits of New York again contended that the Senate could alter its rules by a simple majority at the beginning of a new Congress. Majority Leader Mike Mansfield successfully moved to table Senator Javits' appeal.

At the beginning of the first session of the Ninety-fourth Congress, Senator Pearson joined with Minnesota Senator Walter Mondale in sponsoring an attempt to change the cloture rule to enable three-fifths of the senators present and voting to invoke cloture. Once more, the strategy would need a ruling by the chair that debate could be closed by a simple majority on a rules change at the opening of a Congress. Senator Pearson made a lengthy multiple-part motion that

the Senate proceed to consider the resolution, and that

> under article I, section 5, of the U.S. Constitution, I move that debate upon the pending motion to proceed to the consideration of Senate Resolution 4 be brought to a close by the Chair immediately putting this motion to end debate to the Senate for a yea-and-nay vote; and, upon the adoption thereof by a majority of those Senators present and voting, a quorum being present, the Chair shall immediately thereafter put to the Senate, without further debate, the question on the adoption of the pending motion to proceed to the consideration of Senate Resolution 4.[61]

Senator Mansfield raised a point of order against the motion, because it prescribed an end to debate by a majority vote. Vice President Nelson Rockefeller submitted the Mansfield point of order to the Senate for its decision. When the Senate voted 51 to 42 to table the point of order, it was, in effect, endorsing the doctrine that cloture may be invoked by a majority to change Senate rules at the start of a Congress.

Senator James Allen of Alabama then moved that the motion be divided, since it contained distinct and separate clauses. The effect of Allen's motion was to permit debate on the individual parts of the motion, which could not be debated when considered as a whole. Amendments and intervening motions followed, so that, as the Rules Committee's history pointed out, "Although the principle of majority cloture had been [temporarily] endorsed, the parliamentary tangle which followed division of the motion prevented a majority cloture vote from being taken on the original Pearson resolution." [62]

During the debate, Senator Russell Long of Louisiana offered to compromise on a constitutional three-fifths cloture rule. I, therefore, introduced a resolution on February 28, providing that debate in the Senate be closed by a vote of "three-fifths of the senators duly chosen and sworn," except in the case of a measure or motion to change the rules of the Senate, when a two-thirds vote of "senators present and voting" would be required to close debate. I requested immediate consideration of this resolution, but, in response to an objection, the resolution was held over.[63]

On March 3, 1975, the Senate voted to reconsider its February 20 action tabling Mansfield's point of order; rejected the motion to table the point of order; and, the next day, sustained the Mansfield point of order by a vote of 53 to 43. By this action, as the Rules Committee's published history stated, the Senate "erased the precedent of majority cloture established two weeks before, and reaffirmed the 'continuous' nature of the Senate rules." [64]

Also on March 3, I entered a cloture motion on the motion to consider the Mondale-Pearson resolution. Two days later, the Senate invoked cloture by a vote of 73 to 21—an affirmative vote by more than two-thirds of the senators present and voting—and voted 69 to 26 to consider the Mondale-Pearson resolution. The Senate then adopted the resolution that I had introduced on February 28 as an amendment in the nature of a substitute. I subsequently introduced a motion to close debate on the resolution as amended, and, on March 7, the Senate voted 73 to 21 for cloture. The same day, the Senate adopted my substitute providing that three-fifths of all senators chosen and sworn could invoke cloture. This provision applied to all measures except those amending the rules of the Senate, which still required a two-thirds vote of the senators present and voting.[65]

Four years later, on February 22, 1979, the Senate agreed to a resolution I introduced establishing a cap of one hundred hours of consideration once cloture had been invoked on a measure. When that time expired, the Senate would proceed to the final disposition of the measure or matter. Only amendments

then pending and only a motion to table, a motion to reconsider, and motions necessary to establish a quorum were then in order.[66]

Under the resolution, each senator would be entitled to one hour of time. Senators could yield their time to the majority or minority floor managers of the bill, or to the majority or minority leaders. Except by unanimous consent, none of the designated four senators could have more than two additional hours yielded to him or her. These senators, in turn, could yield their time to other senators. If all available time expired, a senator who had not yielded time, and who had not yet spoken on the matter on which cloture had been invoked, could be recognized for ten minutes for the sole purpose of debate.

The resolution, as adopted, provided that no senator could call up more than two amendments until every other senator had had the opportunity to call up two amendments. The resolution was amended by Senator Ted Stevens of Alaska to provide that, after cloture was invoked, the reading of amendments would be waived routinely if they were available in printed form to members "for not less than twenty-four hours."

The former cloture rule made in order amendments introduced prior to the completion of the cloture vote. The 1979 resolution made in order only those first degree amendments submitted by 1 p.m. of the day following submission of a cloture motion, with second degree amendments (amendments to amendments) in order only if submitted in writing one hour prior to the beginning of the cloture vote.

In January 1985, I introduced a resolution relative to television broadcasts of Senate debates. In my resolution, I suggested a number of rules changes, one of which was to substitute a twenty-hour post-cloture time limitation for the one-hundred-hour cap. In October, the Rules Committee ordered the resolution reported to the Senate with all provisions stricken that did not relate directly to the issue of television in the Senate. In February 1986, the resolution was laid before the Senate and debated for several days. On February 20, the Senate adopted a motion to recommit the resolution to the Rules Committee with instructions to report back forthwith the twenty-hour post-cloture cap and other provisions contained in my original resolution. One week later, on February 27, 1986, Majority Leader Bob Dole, Rules Committee Chairman Charles Mathias, other senators, and I offered a leadership amendment in the nature of a substitute. That same day, the Senate adopted this amendment; it then agreed to the resolution as amended, by a roll-call vote of 67 to 21.[67] The substitute amendment contained the current overall limitation of "thirty hours of consideration" after cloture has been invoked. The thirty hours may be increased by a nondebatable motion adopted by an affirmative vote of three-fifths of the senators duly chosen and sworn. The amendment also provided that, after cloture, the reading of the *Journal* could be waived by majority vote on a nondebatable motion.[68]

Mr. President, the current cloture rule is the product of decades of trial and experience aimed at curbing the extremes in the use of filibusters to block Senate action. It has discouraged—though not eliminated—post-cloture filibusters and has also provided a more effective tool in overcoming all but the most determined filibusters carried on by a sizable minority. Its effectiveness is aided greatly by the strengthening precedents that have been established over the past century, some of which antedate the first cloture rule in 1917.